

ADDENDUM TO INITIAL STATEMENT OF REASONS (OAL File No. 2019-0430-06)

On May 10, 2019, the Department of Justice (Department) published proposed regulations regarding the Fair and Accurate Governance of the CalGang Database, pursuant to the authority provided in Penal Code section 186.36. These and other rulemaking documents are available for review on the Attorney General's website at <https://oag.ca.gov/bciis/regs>.

The Department received written public comments on the proposed regulations until June 25, 2019. The Department also held public hearings on June 26, 2019 (Los Angeles) and June 27, 2019 (Sacramento). Oral comments on the proposed regulations were accepted at each of these hearings and transcribed by a certified court reporter.

The Department reviewed all comments received during the public comment period. In response to these public comments, and to clarify the regulations as originally proposed, the Department has modified its proposed regulations, and has prepared this Addendum to the Initial Statement of Reasons (Addendum).

This Addendum explains the modifications and the reasons for these modifications in the "Necessity of Modifications to Proposed Regulations" section below.

NECESSITY OF MODIFICATIONS TO PROPOSED REGULATIONS

§ 750.2. Purpose of the CalGang Database.

This provision was amended to remove reference to "official action." This amendment is in response to public comments noting that there was previously no clear interpretation of what the meaning of "official action" was.

Subdivision (b). This provision was added using language that was previously in this section. The Department determined that it was necessary to restructure the section for clarity.

New Subdivision (c). This provision was added to specify that the database "shall not be used as the sole basis when making street-level determinations on who to stop and detain." This addition is in response to public comments which noted that the regulations did not previously place a limitation on the use of the database for stopping and detaining people.

New Subdivision (d). This provision was added to specify that CalGang records "shall not be referred to in official reports." This provision was added because the Department felt it was necessary to further clarify the purpose of the CalGang database and to ensure that it is only used for criminal investigative purposes.

Subdivision (e). This provision was amended to remove "only" before "be used as a means of identifying" as additional provisions pertaining to use of the information were added.

§ 750.4. Definition of Key Terms.

Subdivision (e). The definition of “contact” was amended to add “lawful” before the word “observation.” This amendment is in response to comments noting that the previous definition did not require observations by law enforcement to be made lawfully. This provision was additionally amended to remove “Gang” before “Associate.” This amendment was made to reflect the change in these terms being combined into “A Gang Member or Associate” in subdivision (h) of section 750.4.

Former Subdivision (f). The definition of “criminal predicate” was removed to avoid duplication of the definition of “reasonable suspicion” in subdivision (t). Both of these definitions were based on the Code of Federal Regulations, Title 28, Section 23.20(c). The Department felt that it was no longer necessary to have both definitions in these regulations.

Subdivision (h) (formerly subdivision (i)). The definition of Gang Associate was amended by adding “Member or” before “Associate.” This new definition is a result of the Department no longer distinguishing a difference between the designation of a person as a Gang Member or a Gang Associate in the CalGang database and instead applying the same criteria requirements to any person. This provision was also amended to add “to be designated in the CalGang database” after “the requirements.” This amendment was made for clarity.

Former Subdivision (j). The definition of “Gang Member” was removed because Gang Member and Gang Associate were combined into a new term, “Gang Member or Associate,” in subdivision (h).

Former Subdivision (w). The definition of “reliable source” was removed due to the removal of the criterion (a)(3) in what is now section 752.2. This definition is no longer necessary as “reliable source” is no longer used in the text of the regulations.

Subdivision (aa) (formerly subdivision (dd)). The definition of “User” was amended nonsubstantively to replace the word “require” with “warrant.” This amendment was made because not all User’s employment duties “require” that they have access to the CalGang database; however, their duties may “warrant” access to the database.

§ 750.6. Access to the CalGang Database.

New Subdivision (a)(1). This provision was added to clarify that the Department is the only entity that may grant access to a User from an out-of-state agency or a federal agency. This provision is necessary to ensure that Node or User Agencies cannot grant access to an out-of-state or a federal agency.

Subdivision (c). This provision was amended to add “the Department or” before “their respective Node Agency.” This amendment was made because an out-of-state or a federal agency must enter into a memorandum of understanding with the Department and not a Node Agency pursuant to subdivision (a)(1).

Subdivision (d). This provision was amended to change the revision date of the CalGang User Agreement form to “July 2019.” The form was updated to add “[y]our access may be suspended if you mention CalGang in any court proceedings” on the first page and a field to capture the “username” was added on the second page.

Subdivision (e)(4). This provision was amended nonsubstantively to correct a grammatical error.

Subdivision (e)(5). This provision was amended nonsubstantively to replace “a” with “the name and contact information for the person designated by the Agency as the” before “point of contact.” This amendment was made to specify that the point of contact is a person to avoid misinterpretation of a point of contact meaning an email address, physical or mailing address, or phone number. This provision was also amended nonsubstantively by removing “a” before “training coordinator.”

The Department also amended this provision to remove “who meets the definition of User in subdivision (dd) of section 750.4” because only the point of contact must be a User, not the training coordinator. This clarification was made by adding subdivision (e)(5)(A).

New Subdivision (e)(5)(A). This provision was added to specify that a point of contact needs to be a User.

New Subdivision (e)(6). This provision was added to ensure that individuals responsible for supervisory review are in a supervisory position and have gang expertise. This provision is necessary for the Department’s auditing and review purposes.

New Subdivision (e)(6)(A). This provision was added to specify that User access from an out-of-state agency or a federal agency will be limited and will not include adding or deleting any records in the CalGang database. This provision is necessary so an out-of-state agency or a federal agency will understand the limitations that will be placed on a User from their agency if granted access to the CalGang database.

New Subdivision (f). This provision was added to clarify that the Department or Node Administrators have the responsibility of approving or denying written requests for access to the CalGang database from Agencies within their Node. This provision is necessary so that Node Administrators understand their role regarding requests for access to the CalGang database.

New Subdivision (f)(1). This provision was added to clarify that the Department will be responsible for reviewing requests for access to the CalGang database received from an out-of-state or a federal agency and that, if the Department enters into a memorandum of understanding with the requesting Agency, that memorandum of understanding will be maintained by Department.

New Subdivision (g). This provision was added to clarify that a proxy query can be requested by a Non-User that does not have access to the CalGang database. This addition is in response to public comments noting that the access requirements were confusing surrounding proxy queries.

Former § 750.8. Limitations to the Access Provided to an Out-of-State Agency or a Federal Agency.

This section was removed to avoid duplication of content already contained in section 750.6. The requirements and restrictions specific to an out-of-state or a federal agency have been consolidated and added to section 750.6.

§ 750.8 (Formerly 751). The Node Administrator’s Role and Admission as a Node Agency.

New Subdivision (b)(5)(A). This provision was added to require Node Administrators or their Designees to attend CGNAC meetings. This provision is necessary because attendance at the meetings is imperative to staying abreast of changes to policies, procedures, trainings, and the CalGang database as a whole.

Subdivision (c). This provision was amended nonsubstantively to replace “will” with “shall” for the purpose of consistency.

§ 751 (Formerly 751.2). CalGang Database User Terms and Account Security.

Subdivision (a). This provision was amended nonsubstantively to add “person as the” in front of “point of contact.” This amendment was made to specify that the point of contact is a person to avoid misinterpretation of a point of contact meaning an email address, physical or mailing address, or phone number.

Subdivision (a)(2). This provision was amended nonsubstantively to correct a grammatical error.

New Subdivision (a)(3). This provision was added because the Department and Node Administrators are the only entities that may create accounts. This provision is necessary for quality control to prevent point of contacts from also creating accounts.

§ 751.2 (Formerly 751.4). Specific Policies and Procedures Set by Node Agencies and User Agencies.

Subdivision (a). This provision was amended nonsubstantively to remove “either” to correct a grammatical error.

§ 751.4 (Formerly 751.6). Proxy Query to the Information Contained in the CalGang Database.

Subdivision (a). This provision was amended to replace “that” with “who.” This was amended for proper grammar and clarity. This provision was additionally amended to replace “it” with “the Non-User” before “shall send it to the User.” This amendment was made for proper grammar and clarity.

Subdivision (a)(1). This provision was amended to replace “March” with “July” to update the revision date of the Proxy Query Agreement form. The form was updated to add a field for the “Information Provided to Requestor” on the second page.

New Subdivision (a)(2). This provision, which was originally included as subdivision (a)(3), was moved so that the listed steps are in order of occurrence when a User is conducting a proxy query.

Subdivision (a)(3). This provision was nonsubstantively amended to replace “performing” with “conducting.” This was amended for consistency with the language used in this section. This provision was also amended to add the revision date of the Proxy Query Agreement form.

New Subdivision (a)(4). This provision was added to address situations in which a Non-User is unable to complete the Proxy Query Agreement form prior to receiving the requested information. This provision allows a proxy query to be conducted when a “Non-User has an urgent need to request a proxy query while in the field.”

New Subdivision (a)(4)(A). This provision was added to require a Non-User requesting a proxy query while in the field to provide the same information as that required for the Proxy Query Agreement form. This provision is necessary to allow the User conducting the proxy query to obtain the information necessary to enter into the fields of the CalGang database as required prior to conducting the proxy query.

New Subdivision (a)(4)(B). This provision was added to inform the Non-User of the limitations placed on the use of information from the CalGang database. This provision is necessary because the Non-User has not undergone training on the CalGang database.

New Subdivision (a)(4)(C). This provision was added to ensure that both the Non-User requesting a proxy query and the User are aware that a signed Proxy Query Agreement form must still be sent to the User when a query is conducted as a result of urgent need absent a precipitating Proxy Query Agreement form. Furthermore, there is a 10 day requirement for the sending of this form to allow the Non-User ample time to complete and mail the form to the User who conducted the proxy query. This provision is necessary so that a signed Proxy Query Agreement form can be maintained on file for auditing purposes.

New Subdivision (a)(4)(D). This provision was added to require the Non-User requesting the proxy query to agree to sign and send a Proxy Query Agreement form within 10 days before the proxy query will be conducted on his or her behalf. This provision is necessary so the Non-User

agrees to send a signed form, ensuring that a signed Proxy Query Agreement form can be maintained on file for auditing purposes.

New Subdivision (a)(4)(E). This provision was added to hold the User accountable for ensuring that a signed Proxy Query Agreement form is received. This provision is necessary so that a signed Proxy Query Agreement form can be maintained on file for auditing purposes.

Subdivision (c). This provision was amended to replace “section 754” with “Article 8.” This amendment was made to specify that nothing in Article 8 shall be limited by subdivision (a).

§ 751.6 (Formerly 751.8). User Training.

Subdivision (b)(1). This provision was amended to remove “criminal predicate” because the definition of “criminal predicate” was removed from the regulations.

Subdivision (b)(2). This provision was amended to remove “a Gang” before “Associate.” This amendment was made to reflect that Gang Member and Gang Associate were combined into a new term, “Gang Member or Associate,” in subdivision (h) of section 750.4.

New Subdivision (b)(13). This provision was added to require that training address “the impact of data collection on community members.” This addition is in response to a public comment requesting the inclusion of this topic in the training.

§ 751.8 (Formerly 752). Initial Exam and Recertification Exam.

Subdivision (a). This provision was amended to add the revision date for the CalGang User Agreement form and “incorporated by reference herein” after “CalGang User Agreement form.” This was amended to specify that the form is incorporated by reference.

Subdivision (e). This provision was amended to add “or longer” after “one year.” This amendment was made to specify that this limitation is not applied only to a User who fails to log in for exactly one year, but rather “one year or longer.”

§ 752 (Formerly 752.2). Requirements to Become an Approved Instructor.

Subdivision (a). This provision was amended nonsubstantively to add “shall be” before “approved” for clarity. Additionally, there is a nonsubstantive addition of “and” before “shall be graduates of the training” to specify that the instructors need to both be approved and graduates of the training and that these requirements are not interchangeable. There is another nonsubstantive addition of “be” before “tested in system proficiency” for proper grammar.

The Department also amended this provision to add a requirement that instructors “have User experience with the CalGang database verified by the Node Administrator or the Department” to

ensure that instructors have relevant experience with the CalGang database before training any User. The addition of the Node Administrator or the Department verifying this experience will ensure that instructors are credible and knowledgeable on the material on which they will be training Users.

New Subdivision (b). This provision was added to require the name of any instructor approved by a Node Administrator or Node Administrator's Designee to be reported to the Department. This provision is necessary so that the Department can maintain records of instructors who are training on the CalGang database and to ensure the Department can contact all trainers with updated training material, policies and procedures, etc.

Subdivision (c) (formerly subdivision (b)). This provision was amended to add "[i]nstructors shall be subject to annual recertification training." This provision is necessary so that instructors can be annually informed of any system changes or updates, new mandates, and regulations of which they may be otherwise unaware.

New Subdivision (d). This provision was added to specify that the Department has the authority to revoke training privileges of an instructor. This provision is necessary to make the instructor-related regulations enforceable.

§ 752.2 (Formerly 752.4). Criteria to be Designated as a Gang Member or Associate.

The title of this section was amended to remove "a Gang" before "Associate" to reflect the change in these terms being combined into "A Gang Member or Associate" in subdivision (h) of section 750.4.

New Subdivision (a). This provision was added so that the need for reasonable suspicion would not be overlooked when designating a person as a Gang Member or Associate in the CalGang database. "Reasonable suspicion" was previously incorporated into subdivision (b) of section 752.6, but the Department added this new provision so that the requirement of having reasonable suspicion before designating a person as a Gang Member or Associate in the CalGang database is clear.

Subdivision (b) (formerly subdivision (a)). This provision was amended to specify that the criteria listed in this subdivision are in addition to the requirement that subdivision (a) be satisfied. This provision was additionally amended to remove "a Gang" before "Associate." This amendment was made to reflect that Gang Member and Gang Associate were combined into a new term, "Gang Member or Associate," in subdivision (h) of section 750.4.

Subdivision (b)(1) (formerly subdivision (a)(1)). This provision was amended to include "currently-active" before "Gang Member or Associate." This amendment is in response to public comments noting that the previous provision could have unintentionally been satisfied by people admitting to past gang membership or association. This provision was additionally amended to remove "a Gang" before "Associate." This amendment was made to reflect that

Gang Member and Gang Associate were combined into a new term, “Gang Member or Associate,” in subdivision (h) of section 750.4.

New Subdivision (b)(2)(A). This provision was added to require that an arrest for an offense consistent with gang activity be “documented on an arrest or crime report.” It further stipulates that “[a] field interview card or report may be used as a source document if it is used in conjunction with an arrest or crime report.” This addition is necessary for clarity.

Former Subdivision (a)(3). This provision was removed in response to public comments.

Former Subdivision (a)(4). This provision was removed in response to public comments.

Former Subdivision (a)(6). This provision was removed in response to public comments.

Former Subdivision (a)(7). This provision was removed in response to public comments.

Subdivision (b)(3) (formerly subdivision (a)(5)). This provision was amended to add “accessories” before “symbols.” This amendment was made because the Department acknowledges that certain accessories are representative of gang membership or association.

New Subdivision (b)(3)(A). This provision was added to specify that an item of clothing shall not be considered a symbol. This provision is necessary to ensure that a color of clothing or style of dress is not documented as a symbol, but rather an item of clothing has a symbol on it that satisfies the criterion in subdivision (b)(3).

Subdivision (b)(4) (formerly subdivision (a)(8)). This provision was amended to add “or association” after “criminal street gang membership.” This amendment was made to specify that a tattoo, mark, scar, or branding can be indicative of criminal street gang association as well as membership.

New Subdivision (d). This provision was added to clarify that the regulations are consistent with the Code of Federal Regulations Title 28 Section 23.20 and the five year limitation placed on maintaining intelligence records. This addition is in response to public comments noting that there was confusion on the time limit for satisfaction of criteria.

§ 752.4 (Formerly 752.6). Minimum Age of Entry and Requirements to Enter a Person into the CalGang Database.

Subdivision (b). This provision was amended to add “or Associate” after “Gang Member.” This amendment was made to reflect that Gang Member and Gang Associate were combined into a new term, “Gang Member or Associate,” in subdivision (h) of section 750.4.

This provision was nonsubstantively amended to replace “based on a trained law enforcement officer’s reasonable suspicion” with “by a trained law enforcement officer” due to the changes made to subdivision (a) of section 752.2. This provision was also amended nonsubstantively to

remove “initially” before “entered.” The Department changed the requirement for restarting the retention period to be the entry of two criteria which resulted in the requirement for initial and subsequent entry now being the same.

Former Subdivision (c). This provision was removed because the definition of “Gang Associate” was removed.

Former Subdivision (c)(1). This provision was removed because the definition of “Gang Associate” was removed.

§ 752.6 (Formerly 752.8). Other Rules Pertaining to the Entry of a Person in the CalGang Database.

Former Subdivision (a). This provision was removed in response to public comments requesting that the same number of criteria be required to restart the retention period as are required for initial entry into the CalGang database. This provision is no longer necessary as the requirements for reentry and subsequent entry are now the same as those for initial entry.

§ 752.8 (Formerly 753). Criteria for an Organization to be Designated as a “Criminal Street Gang.”

Subdivision (a)(1). This provision was amended nonsubstantively to remove “articulable” before “reasonable suspicion.” This amendment was made for the purpose of consistency.

Subdivision (a)(2). This provision was amended to change “Gang Members” to “a Gang Member or Associate” and “the Gang Members” to “each Gang Member or Associate.” This amendment was made to reflect that Gang Member and Gang Associate were combined into a new term, “Gang Member or Associate,” in subdivision (h) of section 750.4.

Subdivision (c). This provision was added to address the retention period for criminal street gang records in the CalGang database.

§ 753 (Formerly 753.2). Supervisory Review Process.

This provision was amended to add “[a]ny intelligence data obtained in violation of any applicable federal, state, or local law, policy, or ordinance shall not be entered into the CalGang database.” This amendment is in response to a public comment noting that the previous version only required the supervisory review to determine if intelligence data was obtained in violation of any of the aforementioned statutes, policies, or ordinances, but did not stipulate that any such data shall not be entered into the CalGang database.

§ 753.4 (Formerly 753.6). Notifying a Person of Inclusion in the CalGang Database.

Subdivision (b). This provision was amended to replace “may” with “shall” to clarify that delivery of the notice is not optional.

Subdivision (b)(1). This provision was amended to remove “a Gang” before “Associate.” This amendment was made to reflect that Gang Member and Gang Associate were combined into a new term, “Gang Member or Associate,” in subdivision (h) of section 750.4.

Former Subdivision (c)(1). This provision was removed because Gang Member and Gang Associate were combined into a new term, “Gang Member or Associate,” in subdivision (h) of section 750.4 and there is no longer a difference in the designation of a person as a Gang Member or a Gang Associate.

Subdivision (c)(1) (formerly subdivision (c)(2)). This provision was amended to remove “[t]he basis for the designation” and add “[t]he criteria supporting the person’s designation as a Gang Member or Associate.” This amendment was made to require a notice of inclusion in the CalGang database to include the criteria that the designee met in order to be designated as a Gang Member or Associate.

New Subdivision (c)(2). This provision was added to require a notice of inclusion in the CalGang database to include “[t]he date(s) of the contacts or observations on which the criteria for designation were satisfied.” The purpose of this provision is to provide the person being notified of their inclusion in the database with as much information as possible as to why they are being designated and when the contacts or observations that led to their designation were made.

New Subdivision (c)(4). This provision was added for consistency with section 754 and to require the Penal Code reference in the notice of inclusion so the person receiving the notice will be aware that they have a legal right to petition the court to review their designation.

Subdivision (c)(5) (formerly subdivision (d)(1)). This provision was added to change the inclusion of “the name of the criminal street gang that the person is connected to in the database” from being optional to mandatory. The purpose of this provision is to provide the person being notified of their inclusion in the database with as much information as possible regarding their designation.

Former Subdivision (d)(1). This provision was removed and added to subdivision (c) to change the inclusion of “the name of the criminal street gang that the person is connected to in the database” from being optional to mandatory.

Subdivision (i). This provision was amended to remove “a Gang” before “Associate.” This amendment was made to reflect that Gang Member and Gang Associate were combined into a new term, “Gang Member or Associate,” in subdivision (h) of section 750.4.

New Subdivision (j). This provision was added to clarify that the information contained in this section concerning the notice of inclusion and the attempted delivery of this notice shall be

captured in the CalGang database. This provision is necessary so that the Department may audit and ensure that Agencies comply with these regulations.

§ 753.6 (Formerly 753.8). Information Requests and Verifying the Identity of the Requesting Party.

New Subdivision (a)(1). This provision was added to specify that an attorney may send an information request on behalf of a client. This addition is in response to a public comment requesting that attorneys be allowed to communicate with law enforcement agencies for information as to a client's designation in the CalGang database.

Subdivision (c). This provision was amended to include "in either of the following ways:" to allow for presentation of a school identification card to verify a person's identity in addition to the acknowledgement form outlined in subdivision (c)(1). This provision was additionally amended to move the requirements for an acknowledgement form to subdivision (c)(1).

New Subdivision (c)(2). This provision was added to allow a person to use a school identification card to verify their identity. This addition is in response to public comments requesting accommodations for individuals who may not have a driver's license.

§ 753.8 (Formerly 784). An Agency's Response to an Information Request

Subdivision (a)(2). This provision was amended to remove "a Gang" before "Associate." This amendment was made to reflect that Gang Member and Gang Associate were combined into a new term, "Gang Member or Associate," in subdivision (h) of section 750.4.

Subdivision (a)(3). This provision was removed and replaced with "[t]he criteria supporting the person's designation as a Gang Member or Associate in the CalGang database." This was amended to require a notice of inclusion in the CalGang database to include the criteria that the designee met in order to be designated as a Gang Member or Associate.

New Subdivision (a)(4). This provision was added to require a notice of inclusion in the CalGang database to include "[t]he date(s) of the contacts or observations on which the criteria for designation were satisfied." The purpose of this provision is to provide the requester with as much information as possible as to why they were designated and when the contacts or observations that led to their designation were made.

New Subdivision (a)(7). This provision was added to change inclusion of "[t]he name of the criminal street gang that the person is connected to in the database" from being optional to mandatory. The purpose of this provision is to provide the requester with as much information as possible regarding their designation.

Former Subdivision (b)(1). This provision was removed and added to subdivision (a) to change inclusion of “[t]he name of the criminal street gang that the person is connected to in the database” from being optional to mandatory.

Subdivision (c). This provision was amended to remove “a Gang” before “Associate.” This amendment was made to reflect that Gang Member and Gang Associate were combined into a new term, “Gang Member or Associate,” in subdivision (h) of section 750.4.

Subdivision (d). This provision was amended to remove “a Gang” before “Associate.” This amendment was made to reflect that Gang Member and Gang Associate were combined into a new term, “Gang Member or Associate,” in subdivision (h) of section 750.4.

New Subdivision (e). This provision was added to clarify that the information contained in this section concerning the response to an information request, or lack thereof, shall be captured in the CalGang database. This provision is necessary so that the Department may audit and ensure that Agencies comply with these regulations.

§ 754 (Formerly 754.2). An Agency’s Response to a Request for Removal.

The title of this section was amended to add “An” before “Agency’s” to correct a grammatical error.

New Subdivision (b). This provision was added to establish that an agency is not required to respond to a request for removal if doing so would compromise an active criminal investigation or the health or safety of a juvenile that has been designated as a gang member or gang associate in the CalGang database. This provision is necessary because it supports and clarifies the exemption provided in subdivision (d) of Penal Code section 186.34.

New Subdivision (b)(1). This provision was added to require agencies to document instances in which a request for removal is not responded to and maintain the documentation until the record pertaining to that person is purged from the CalGang database. This provision is necessary because it ensures that documentation for exemptions is maintained for auditing purposes.

New Subdivision (c). This provision was added to require an Agency receiving a request for removal to “consider any evidence presented by a person requesting removal.” This addition is in response to a public comment suggesting that the successful completion of parole or probation be considered as evidence that a person is no longer affiliated with a gang. The Department further incorporated other examples of evidence that shall be considered.

§ 754.2 (Formerly 754.4). Retention Period for Adult Records.

The title of this section was amended to add “adult” before “records” to indicate that the retention period for adult records and juvenile records are different.

Subdivision (a). This provision was amended to add “[t]he record of a person who is 18 years of age or older” to reflect that the five-year retention period is now only applicable to adults. This amendment is in response to public comments stating that retention periods should be based on empirical research, which indicates that gang membership is shorter for juveniles.

Subdivision (b). This provision was amended to specify that the same number of criteria is required to reset the retention period as is required for entry. This amendment is in response to public comments requesting the number of criteria required to reset the retention period be the same as that required for entry. This provision was additionally amended to add “pursuant to section 752.2” for clarity.

New § 754.4. Retention Period for Juvenile Records.

New Subdivision (a). This provision was added to require a shorter, three-year retention period for juveniles. This amendment is in response to public comments stating that retention periods should be based on empirical research, which indicates that gang membership is shorter for juveniles.

New Subdivision (b). This provision was amended to specify that the same number of criteria is required to reset the retention period as is required for entry. This amendment is in response to public comments requesting the number of criteria required to reset the retention period be the same as that required for entry.

New Subdivision (c). This provision was added to specify that the retention period for a record will change if two additional criteria are added to the record of a juvenile after the juvenile reaches 18 years of age.

§ 755. Source Documents.

Subdivision (b)(1). This provision was added to specify that a photograph being entered as a source document into the CalGang database must be captured within five years of the date of entry of the criterion. This amendment is in response to public comments noting that the regulations did not previously specify the need for photographs to be current.

Subdivision (c)(1). This provision was amended nonsubstantively to replace “lacking” with “missing” and “inappropriate” with “incomplete.” This amendment was made for consistency with the language used in subdivision (c).

§ 755.2. Peer Audits of Records in the CalGang Database.

Subdivision (a). This provision was amended to replace “report the” with “provide the audit(s) and corresponding” before “results of the audit(s).” This amendment was made to require the actual audits and corresponding documentation to be provided to the Department rather than only

the results. This provision is necessary for auditing purposes so that the Department can review the audit(s) and results for accuracy and compliance.

New Subdivision (c). This provision was added to clarify that the Department will “review the audit(s) and corresponding results for accuracy and compliance.” This provision is necessary to clarify the Department’s role in the auditing process and reflect that the Department reviews the audit(s) and results for accuracy and compliance.

§ 755.4. Audits of Criminal Street Gangs.

Subdivision (a). This provision was amended to add “designated in the CalGang database” after “criminal street gangs” for clarity. This provision was also amended to replace “Gang Members” with “persons designated as a Gang Member or Associate.” This amendment was made to reflect that Gang Member and Gang Associate were combined into a new term, “Gang Member or Associate,” in subdivision (h) of section 750.4.

Subdivision (b). This provision was amended to replace “Gang Members” with “persons designated as a Gang Member or Associate.” This amendment was made to reflect that Gang Member and Gang Associate were combined into a new term, “Gang Member or Associate,” in subdivision (h) of section 750.4.

Subdivision (c). This provision was amended to replace “Gang Members” with “persons designated as a Gang Member or Associate.” This provision was additionally amended to replace “documented Gang Members” with “persons designated as a Gang Member or Associate.” These amendments were made to reflect that Gang Member and Gang Associate were combined into a new term, “Gang Member or Associate,” in subdivision (h) of section 750.4.

Subdivision (d)(1). This provision was amended to replace “Gang Members” with “persons designated as a Gang Member or Associate.” This amendment was made to reflect that Gang Member and Gang Associate were combined into a new term, “Gang Member or Associate,” in subdivision (h) of section 750.4.

§ 755.6. The Department’s Authority to Audit Node or User Agencies.

Subdivision (a). This provision was amended to add “[a] Node or User Agency shall grant the Department access to the Node or User Agency’s facilities for this purpose.” This amendment was made to require access to be granted to the Node or User Agency’s facilities at the Department’s request when conducting an audit of a Node or User Agency. This amendment is necessary to enable the Department to ensure compliance as a part of its oversight responsibilities.

§ 756.2. Annual Reporting of Data to the Department.

Subdivision (a)(5). This provision was amended to add “or dismissed by a petitioner” after “denied by a court.” This amendment is in response to a public comment.

§ 757.2. Enforcement of these Regulations.

New Subdivision (c). This provision was added to specify that the Department may restrict or revoke the access of a User Agency to the CalGang database and not only an individual User as the regulations previously provided. This provision is necessary to hold User Agencies accountable for the actions of their Users. Furthermore, this provision was added to enable the Department to properly investigate misuse of the CalGang database.